

1 Arthur A. Hartinger (SBN: 121521)
ahartinger@meyersnave.com
2 Linda M. Ross (SBN: 133874)
lross@meyersnave.com
3 Jennifer L. Nock (SBN: 160663)
jnock@meyersnave.com
4 MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
5 Oakland, California 94607
Telephone: (510) 808-2000
6 Facsimile: (510) 444-1108

7 Attorneys for Plaintiff
City of San Jose

8
9 **IN THE SUPERIOR COURT FOR THE**
10 **COUNTY OF SANTA CLARA**

11 SAN JOSE POLICE OFFICERS'
ASSOCIATION,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSE AND BOARD OF
ADMINISTRATORS FOR POLICE AND
15 FIRE DEPARTMENT RETIREMENT PLAN
OF CITY OF SAN JOSE,

16 Defendants.

Case No.

**DECLARATION OF ALEX GURZA IN
SUPPORT OF DEFENDANT'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Date: June 6, 2012

Time: 8:15 am

Trial Date: None Set

21 I, ALEX GURZA, declare:

22 1. I am a Deputy City Manager of the City of San Jose ("the City"). I submit this
23 declaration in opposition to the ex parte application of the San Jose Police Officers' Association
24 ("SJPOA") for a Temporary Restraining Order and Order To Show Cause Why a Preliminary
25 Injunction Should Not Issue. I have personal knowledge of the facts set forth below and if called
26 as a witness I could and would testify competently thereto.

1 2. SJPOA is objecting to the implementation of “Measure B” – a ballot initiative that
2 is the subject of an election held on June 5, 2012. SJPOA’s application was filed before it is
3 known whether Measure B is actually passed by the electorate.

4 3. I was personally involved in the circumstances leading up to the City Council
5 placing Measure B on the June 5 ballot. I am familiar with its content and its intended effect. I
6 was personally involved in negotiations with the City’s labor unions concerning Measure B.

7 4. The Measure has not yet been certified under the Elections Code, and, as set forth
8 herein, Measure B sets only a “goal” of implementation of September 30, 2012.

9 5. The City Council specifically contemplated a declaratory relief action so that a trial
10 court can initially review the measure *before* key provisions come into effect. The City already filed
11 a declaratory relief action – *City of San Jose v. San Jose Police Officers’ Association, et al.*, United States
12 District Court No. C12-02904 LHK – and that action is currently pending.

13 6. The SJPOA has identified four provisions of Measure B in its request for a TRO.
14 In each case, the City has no plans to implement those Charter provisions in the near future. In
15 each case, the City must develop and draft implementing ordinances and procedures. Measure B
16 does not set a firm deadline for the implementation of its provisions. Again, Measure B only sets
17 a goal of implementation by September 30, 2012. In addition, some of the provisions of Measure
18 B identified by the SJPOA are not new to SJPOA members, but already are contained in City
19 ordinances and City-union Memoranda of Agreement.

20 7. Section 1509-A. Disability Retirements. This Charter section revises the definition
21 for when an employee is entitled to receive a disability retirement. Implementation of this section
22 will require the City to draft, review and enact implementing ordinances. Under the City’s
23 Municipal Code, these ordinances must be submitted to the City Council for a first reading, sent
24 to the Retirement Board for a review and comment period, and then returned to the City Council
25 for a second reading. The ordinances do not become law until 30 days after the second reading.
26 These ordinances are not yet drafted. Therefore, it will likely be several months before the new
27 definitions may be implemented.

28

1 8. The Charter section on disability retirements requires the creation of an
2 independent panel of medical experts, appointed by the City Council. The creation of this panel
3 also requires the drafting and enactment of implementing legislation. In addition, the City
4 Council must engage in the process of choosing the members of the panel and establishing its
5 procedures. Again, these ordinances are not yet drafted.

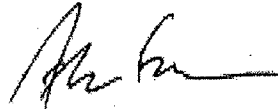
6 9. Section 1511-A. Supplemental Payments to Retirees. Measure B provides that the
7 Supplemental Retiree Benefit Reserve (“SRBR”) shall be discontinued, and its assets returned to
8 the appropriate retirement trust fund. This action will require implementing actions by the City
9 Council and the Retirement Board. However, there is no immediate change for retirees, because
10 the City has not made any payments under the SRBR for at least two years. On May 8, 2012, the
11 City Council passed the most recent ordinance “to continue to suspend the supplemental retiree
12 benefit reserve distribution from the Police and Fire Department Retirement Plan for fiscal year
13 2011-2012, and provide that there shall be no supplemental retiree benefit reserve distribution
14 from the Police and Fire Department Retirement Plan during Fiscal Year 2012-2013.” City
15 unions have recognized that the SRBR is a matter for negotiation and a number of them have
16 proposed its elimination.

17 10. Section 1512-A. Retiree Healthcare. Measure B requires employees to contribute
18 a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded
19 liabilities. The City’s Municipal Code, Sections 3.28.380(C)(1)[Federated employees] and
20 3.36.575(c)(1 and (2) [Police and Fire] already contains the requirement of a 50% split between
21 the City and employees. Moreover, all City unions, including the SJPOA, have agreed in MOAs
22 to transition to prefunding the full Annual Required Contribution (“ARC”) for retiree healthcare
23 benefits, which requires increased contributions by the City and its employees. Under the SJPOA
24 MOA, Article 50, the transition to full funding will occur over a five year period that began on
25 June 28, 2009.

26 11. Measure B also places the definition of “low cost plan” – the benchmark for City
27 contributions for retiree health benefits – into the Charter. This is a clarification of the definition
28 currently in the City’s Municipal Code. Therefore, there is no change for employees or retirees.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 5th of June, 2012, in San Jose, California.
4
5
6
7
8



Alex Gurza

9 1898775.1
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28